

REMARKS/ARGUMENTS

Claims 1-9, 12-17, 19-31, 34 and 35 are pending in the application. The claims have not been amended.

Applicants respectfully submit that the previously supplied Declaration Under §1.131 adequately established conception of the claimed subject matter prior to the April 11, 2003 filing date of the Hyodo reference. This is because, pursuant to MPEP 715.07, the Applicants redacted the date of conception from Exhibit A and stated that the acts occurred prior to April 11, 2003 in the Declaration. As discussed further below, this is sufficient to establish prior conception.

35 U.S.C. § 103 Rejections

Claims 1-9, 12-17, 19-31, 34 and 35 are rejected as being obvious in view of U.S. Patent No. 7,064,088 to Hyodo et al. (“Hyodo”) in view of U.S. Patent No. 6,436,824 to Chooi et al. (“Chooi”). Applicants traverse as described below:

Applicants' previously filed Declaration Under 37 CFR 1.131 adequately established a date of conception prior to the April 11, 2003 effective date of the Hyodo reference

As described in the previous amendment, the effective date of Hyodo for the subject matter relied upon in the rejection is April 11, 2003. (Applicants note that the Office Action stated that the 09/243,156 Application contains the subject matter relied in the rejection. However, the ‘156 application is not published or available on PAIR. Applicants respectfully request that if the Examiner relies upon this application that it be made available to Applicants.) Applicants previously submitted a Rule 131 Declaration stating that the subject matter claimed in the patent application was conceived in the United States prior to April 11, 2003. The below excerpted portion of the Rule 131 Declaration established a date of conception prior to April 11, 2003:

CONCEPTION

1. Prior to April 11, 2003, we invented the subject matter claimed in the patent application cited above. Specifically, we conceived the invention in the United States before that date. In addition, Qingguo Wu, Haiying Fu and Dong Nie drafted an "Invention Priority Data and Information" document describing the invention. This document is attached as Exhibit A and it was prepared prior to April 11, 2003. The specific dates evidencing conception and other confidential information have been redacted from this document.
2. As shown, the "Invention Priority Data and Information" document (Exhibit A) describes producing low-k carbon-doped oxide (CDO) films having low stress.

Regarding independent claims 1, 19 and 29, please see the "Abstract" and "Technical Context." Of particular relevance, see "Process Optimization" on pages 7 and 8, in which forming a CDO film having < 35 MPa and a $k < 3.0$ is described.

In the August 7, 2009 Office Action, the Examiner stated that

The evidence submitted is insufficient to establish a conception of the invention prior to the effective date of the Hyodo et al. (U.S. 7,064,088 B2) reference....Applicants declared having conception of the claimed invention prior to April 11, 2003. However, exhibit A is dated 08/18/2003 [and other exhibits have dates after this]...While applicants declare conception of the invention before 04/11/2003, the applicants have not shown evidence of this. (Office Action, pages 17 and 18)

Applicants respectfully traverse, and submit the above-excerpted portion of the Rule 131 Declaration and the accompanying Exhibit A adequately establishing a date of conception prior to April 11, 2003. MPEP 715.07, II states the requirements for the establishment of dates in a Rule 131 Declaration:

MPEP 715.07

II. ESTABLISHMENT OF DATES

If the dates of the exhibits have been removed or blocked off, the matter of dates can be taken care of in the body of the oath or declaration.

When alleging that conception or a reduction to practice occurred prior to the effective date of the reference, the dates in the oath or declaration may be the actual dates or, if the applicant or patent owner does not desire to disclose his or her actual dates, he or she may merely allege that the acts referred to occurred prior to a specified date.
MPEP 715.07, II (emphasis added)

The specific dates evidencing conception were redacted from Exhibit A, including at item 3 “Invention conception date,” on page 1 of Exhibit A. Applicants declared in the Rule 131 Declaration that the document occurred prior to April 11, 2003. Under MPEP 715.07, to establish a date of conception, Applicants may block off the actual dates of the exhibits and merely state that the acts referred to occurred prior to a specified date. Accordingly, Applicants respectfully submit that the Rule 131 declaration establishes a date of conception prior to the April 11, 2003 effective date of the Hyodo reference.

Accordingly, Applicants submit the effective date of Hyodo for the subject matter relied upon in the rejection is April 11, 2003. At least because Applicants’ Rule 131 Declaration establishes that Applicants were in possession of the inventive concepts of claims 1, 19 and 29 prior to this date, Applicants submit that claim 1, 19 and 29 and their dependent claims are patentable over the combination of Hyodo and Chooi.

CONCLUSION

Applicants believe that all pending claims are allowable and respectfully request a Notice of Allowance for this application from the Examiner. Should the Examiner believe that a telephone conference would expedite the prosecution of this application, the undersigned can be reached at the telephone number set out below. If it is determined that any additional fees are due, the Commissioner is hereby authorized to charge such fees to Deposit Account 504480 (Order No. NOVLP091/ NVLS-2889).

Respectfully submitted,

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